IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL No. 325 OF 2007

Syndicate Bank. ... Appellant.

Vs.

1. The Board of Trustees of the
Port of Bombay and others.

2. M/s.Eastern Export Enterprises

3. Shaw Wallace & Company Ltd.

4. Samrat Shipping Company Ltd. ... Respondents.

WITH
APPEAL No. 403 OF 2007

1. Samrat Shipping Co.Pvt.Ltd.

2. Shaw Wallace & Co. Ltd. ... Appellant.

Vs.

1. The Board of Trustees of the
Port of Bombay and others.

2. M/s.Eastern Export Enterprises

3. Syndicate Bank. ... Respondents.

WITH
APPEAL (LDG.) No. 532 OF 2007

M/s.Easter Exports Enterprises. ... Appellant.

Vs.

1. The Board of Trustees of the
Port of Bombay and others.

2. Syndicate Bank.

3. Shaw Wallace & Company Ltd.

4. Samrat Shipping Company Ltd. ... Respondents.

Ms.Saumya Shrikrishna i/b. Kanga & Co. for the appellant (in Appeal No.325/07) for respondent No.3 (in Appeal No.403/07) and for respondent No.2 [in Appeal (Ldg.) No.532/07].

U.J.Makhija i/b. Mulla & Mulla & C.B.C. for respondent No.1.

K.K.Shroff i/b. Dhru & Co. for respondent No.2 (in Appeal No.325/07) for respondent No.2 (in Appeal No.403/07) and for the appellant [in Appeal (Ldg.) No.532/07.

Ms.Sapna Bakale i/b. R.G.Sheth & Co. for respondent Nos.3 and 4 (in Appeal No.325/07) for the appellants (in Appeal No.403/07) and for respondent Nos.3 and 4 [in Appeal (Ldg.) No.532/07].

CORAM: DR.S.RADHAKRISHNAN AND V.C.DAGA, JJ.

DATED: 21st June 2007.

JUDGMENT : (Per Vijay Daga)

. Perused record and proceedings of the suit, appeals, and the judgment and order impugned herein.

2. Heard finally at the stage of admission by consent of parties since respective advocates appearing for the respective respondents have waived service.

3. All these appeals are directed against the common judgment, order and decree passed in Suit No.782 of 1986 dated 16th June, 2006 decreeing the

suit, under Order 8 Rule 10 of the Code of Civil Procedure, 1908 ("C.P.C." for short) in terms of prayer clause (a) involve identical facts and issues, so this common judgment will dispose of all the appeals.

4. The basis and foundation of decree in all these appeals is failure on the part of the defendants to file their respective written statements, resulting in deemed admission of the averments made in the plaint. It is not necessary to sketch facts in details except to mention that the suit was for recovery of demurrage, port charges, etc. filed by the Board of Trustees of Port of Bombay against the appellants claiming decree in their favour.

SUBMISSIONS

5. The learned counsel appearing for the appellants in all these appeals submit that the provisions of Order 8 Rule 10 of the C.P.C. could not have been invoked by the learned Single Judge of this Court to hold that the appellants were liable to pay decretal claim. All of them placed reliance on the judgment of the Apex Court in the case of **Balraj Taneja V. Sunil Madan, A.I.R.1999 S.C. 3381.** They further contend that the impugned

order can hardly be said to be a judgment. In their submissions, as per judgment of the Apex Court in the case of **Balraj Taleja** (supra) the judgment should be a self-contained document giving clear picture as to the facts of the case and the issues to be tried and settled by the Court with reason irrespective of the fact that whether or not the suit was contested by the defendant by filing a written statement or was ultimately decided as an ex-parte case, or in which the written statement was not filed and the case was decided under Order 8 Rule 10 of C.P.C. The Court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the issues came to be decided or resolved.

6. The appellants further submit that the provision of Order 8 Rule 10 of the C.P.C. gives discretion to the Court either to pronounce a judgment against all the defendant or defendants or make such a order in relation to the suit as it thinks fit and on pronouncement of such a judgment, a decree is required to be drawn up. That while exercising discretion under Order 8 rule 10, Court is expected to record reasons as to why a particular discretion is being exercised. In their submission impugned judgment and order does not disclose any reason for exercise of particular discretion by the

Court to pronounce judgment against all the defendants. The appellants submits that the judgment in question is totally contrary to the law laid down by the Apex Court in the case of **Balraj Taneja (cited supra).**

7. In reply, Mr Makhija, learned counsel appearing for the original plaintiff- the Board of Trustees of Port of Bombay, tried to support the impugned judgment and order but could not take his submission to the logical end in view of the law laid down by the Apex Court in the case of **Balraj Taneja** (supra)

CONSIDERATION:
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8. Heard rival parties. Examined impugned judgment and order, which reads as under:-

> "1.Heard learned counsel for the appearing parties.
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> 2.The suit is for recovery of money. The defendants have not filed the written statement and the averments made in the plaint are deemed to be admitted and accepted by the defendants. The suit of the plaintiff is decreed under Order 8 Rule 10 of the Code of Civil Procedure in terms of prayer clause (a)."

9. A perusal of the aforesaid judgment and order does not give any indication as to why the learned Single Judge has exercised discretion to

pronounce judgment against all the defendants without calling upon the plaintiff to prove its case either by way of affidavit or by producing oral and/or documentary evidence. Not a single document in support of the plaint averments is to be found in the proceedings. Not a single original document is on record in support of suit claim. No notice to admit the documents was given to the defendants to seek admission of the documents though defendants were represented by their respective Advocates in the suit. Under these circumstances, reliance placed by the appellants on the judgment of the Apex Court in **Balraj Taneja's case** (cited supra) cannot be faulted. The Apex Court in the said judgment considered different relevant provisions of the C.P.C., and observed as under:-

> "13. Rule 10. Procedure when party fails to present written statement called for by Court...Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment, a decree shall be drawn up.
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> 14. This Rule, namely Rule 10, was also amended by the Code of Civil procedure (Amendment) Act, 1976 (Act No.104 of 1976). Prior to its amendment, it was held in a number of decisions that the rule can be invoked only in those situations where the Court has required the defendant to file the written statement in terms of Rule 9 of Order 8. A few other High Courts had taken

> the view that this Rule would be applicable even to those cases where a written statement was required to be filed under Order 8, Rule 1 CPC. The conflict of decisions has been set at rest by providing specifically under this Rule that where a party from whom a written statement is required either under Rule 1 or Rule 9 of Order 8 fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit. Rule 10 thus governs both the situations where a written statement is required under Rule 1 of Order 8 as also where it has been demanded under Rule 9. In both the situations, if the written statement has not been filed by the defendant, it will be open to the Court to pronounce judgment against him or make such order in relation to the suit as it thinks fit. It is to be noticed that if the written statement is not filed, the Court is required to pronounce judgment against the defendant. The words "against him" are to be found in Rule 10 of Order 9 which obviously means that the judgment will be pronounced against the defendant. This rule also gives a discretion either to pronounce judgment against the defendant or "make such order in relation to the suit as it thinks fit". These words are of immense significance, inasmuch as they give a discretion to the Court not to pronounce judgment against the defendant and instead pass such order as it may think fit in relation to the suit."

10. The Apex Court considered various reported judgments on the subject provision right from the case of **Sangram Singh v. Election Tribunal, Kotah, AIR 1955 SC 425** and has also taken into account the provisions of the Code of Civil Procedure amended by Amending Act, 1976 and after taking stock of the various relevant provisions, observed as under:-

> "29. As pointed out earlier, the Court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor the Court should proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the Court. In a case, specially where a written statement has not been filed by the defendant, the Court should be a little cautious in proceeding under Order 8, Rule 10, CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of Court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the Court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the Court may, in its discretion, require any such fact to be proved" used in sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit" used in Rule 10 of Order 8."

11. Applying the aforesaid test to the instant case, it will be clear from the facts of the case on hand that suit was for recovery of money, contending that the defendants were importers liable to pay demurrage and port charges. One of the appellants

viz; Syndicate Bank (original defendant No.2) is also styled as an "importer" of the goods. The documents relating to the auction sale and realization of sale proceeds thereof have not been proved. The learned Single Judge before acting under Order 8 Rule 10 of the C.P.C., ought to have scrutinized the facts set out in the plaint to find out whether or not all the pleadings incorporated in the plaint were proper and that the relevant documents were proved. No such exercise has been done. Apart from this, in order to demonstrate infirmity in the case which relates to the impugned judgment passed by the learned Single Judge, the learned counsel for the appellants have again rightly relied upon para 40A of the Judgment of the Apex Court in **Balraj Taneja (cited supra)** which reads, as under:-

> "40A. "Judgment" as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20, Rule 4(2) which says that a judgment:
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> > "shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision."
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> It should be a self-contained documents from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and in what manner. The process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the

judgment."

RESULT:
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12. On the above backdrop and considering the law laid down by the Apex Court, the impugned order can hardly be sustained. We, therefore, allow all these appeals, set aside the impugned judgment and order dated 16th June, 2006 passed by the learned Single Judge and remand the case back for fresh decision, in accordance with law. We also take the written statements of all the parties on record and direct them to physically file it in the suit when the suit would be placed before the learned single Judge for further hearing on 2.7.2007. We request the learned single Judge to proceed with the trial of the suit in accordance with law.

13. All the appeals stand disposed of in terms of this order with no order as to costs.

(V.C.DAGA, J.) **(DR.S.RADHAKRISHNAN, J.)**